

MOTION FILED

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NO. 96-663

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996**

**MARVIN KLEHR AND MARY KLEHR, Petitioners
v.
A. O. SMITH CORPORATION AND
A. O. SMITH HARVESTORE PRODUCTS, INC., Respondents**

**On Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit**

**MOTION TO ALLOW LATE FILING
OF BRIEF *AMICUS CURIAE***

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HPB

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NOW COME *amici curiae*, Plaintiffs' Executive Committee, MDL 1069 and David S. Forbes, et al, and respectfully request that this Honorable Court allow late filing of a brief *amicus curiae* in the above-captioned matter. In support thereof, *amici* state as follows:

1. Through accident, mistake and misfortune, *amici* relied on the provisions of Supreme Court Rule 29.2 rather than the particular provisions of this Court's order of January 10, 1997 stating that that rule is inapplicable.

2. Thus, the brief *amicus curiae* was postmarked by the deadline of February 21, 1997 but was not received by this Honorable Court by 3:00 p.m. on that date.
3. No party will be prejudiced by the short delay, consisting of two or three business days, in filing the brief *amicus curiae*. The brief *amicus curiae* brings to the attention of this Honorable Court relevant matter and argument not already brought to its attention by the parties. Therefore, justice would be served by allowing this motion.
4. Petitioner and respondent consent to the relief requested in this motion.

WHEREFORE, *amici* Plaintiffs' Executive Committee, MDL 1069 and David S. Forbes, et al, request that this Honorable Court:

- A. Grant leave for late filing of their brief *amicus curiae* in the above-captioned appeal; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

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February 28, 1997